

SHANNON L. GUSTAFSON (SBN 228856)  
[sgustafson@lynberg.com](mailto:sgustafson@lynberg.com)  
AMY R. MARGOLIES (SBN 283471)  
[amargolies@lynberg.com](mailto:amargolies@lynberg.com)  
**LYNBERG & WATKINS**  
A Professional Corporation  
1100 W. Town & Country Road, Suite #1450  
Orange, California 92868  
(714) 937-1010 Telephone  
(714) 937-1003 Facsimile

Attorneys for Defendant, COUNTY OF SAN BERNARDINO,  
ROBERT VACCARI, and JAKE ADAMS

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

CASE NO. 5:22-cv-00949-KK-(SHKx)

*Assigned for All Purposes to:*  
*Hon. Kenly K. Kato – Courtroom 3*

L.C., a minor by and through her  
guardian *ad litem* Maria Cadena,  
individually and as successor-in-interest  
to Hector Puga; I.H., a minor by and  
through his guardian *ad litem* Jasmine  
Hernandez, individually and as  
successor-in-interest to Hector Puga;  
A.L., a minor by and through her  
guardian *ad litem* Lydia Lopez,  
individually and as successor-in-interest  
to Hector Puga; and ANTONIA  
SALAS UBALDO, individually,

Plaintiffs,

vs.

STATE OF CALIFORNIA; COUNTY  
OF SAN BERNARDINO; S.S.C., a  
nominal defendant; ISIAH KEE;  
MICHAEL BLACKWOOD;  
BERNARDO RUBALCAVA;  
ROBERT VACCARI; JAKE ADAMS;  
and DOES 6-10, inclusive,

Defendants.

**COUNTY DEFENDANTS’  
OPPOSITION TO PLAINTIFFS’  
MOTION IN LIMINE NO. 1 TO  
EXCLUDE EVIDENCE OF  
DECEDENT’S CRIMINAL  
HISTORY, PRIOR CONTACTS  
WITH LAW ENFORCEMENT,  
PERIODS OF INCARCERATION,  
GANG AFFILIATIONS AND  
POTENTIAL CHARGES AND  
SENTENCING HAD DECEDENT  
SURVIVED**

*Trial Date: June 2, 2025*

*Complaint filed: 06/07/2022*  
*FAC filed: 10/18/22*  
*SAC filed: 01/13/23*  
*TAC filed: 05/12/23*

1 **I. INTRODUCTION**

2 When Decedent Hector Puga was stopped by law enforcement on February 17,  
3 2021, this was far from his first such violent encounter. Puga's criminal history, as  
4 summarized in Plaintiffs' Motion in Limine No. 1, is as consistent as it is extensive.  
5 Puga has been arrested, charged and convicted multiple times for offenses involving  
6 drugs, alcohol, violence against law enforcement and violence against others. This  
7 information is not only highly relevant to the jury's assessment of Puga's conduct on  
8 the date of the shooting, but also for the jury's assessment of the apportionment of  
9 fault on Plaintiff's Negligence claim and to address the significant damages being  
10 requested herein. Plaintiffs now seek to sanitize the record by requesting this Court  
11 exclude all reference to any criminal activity by Puga. Relevant case law and the facts  
12 and circumstances of this case foreclose such a broad exclusion. *See, Johnson v.*  
13 *General Mills Inc.*, 2012 WL 13015023, at \*1 (C.D. Cal. 2012) ("A party cannot use  
14 a motion in limine to sterilize the other party's presentation of the case.").

15 **II. PUGA'S CRIMINALITY IS RELEVANT AND ADMISSIBLE UNDER**  
16 ***BOYD***

17 A peace officer is permitted to introduce evidence of facts that were  
18 unknown to him at the time of the incident where such facts corroborate or increase  
19 the likelihood of the existence of facts that were observed and relied upon by the  
20 officer in the officer's decision to use force during the incident. *Boyd v. City and*  
21 *County of San Francisco*, 576 F.3d 938 (9th Cir. 2009); *see also, Graham, v. Connor*,  
22 490 U.S. 385, 399, n. 2 (1980); 399, n. 12 (factfinder may consider outside evidence  
23 "in assessing the credibility of an officer's account of the circumstances that prompted  
24 the use of force"); *Estate of Chum v. City of Los Angeles*, 585 Fed.Appx. 435, 436  
25 (9th Cir. 2014) (citing *Boyd, supra*, 576 F3d at 943-945 ("Because the challenged  
26 testimony made [defendant's] account more probable, the testimony was relevant, and

1 the district court did not abuse its discretion by admitting it”). Thus, in an excessive  
2 force case, “where what the officer perceived just prior to the use of force is in  
3 dispute, evidence that may support one version of events over another is relevant and  
4 admissible.” *Boyd, supra*, 576 F.3d at 944 (emphasis added).

5 In particular, the Ninth Circuit specifically upheld the trial court’s ruling that  
6 decedent’s alleged “resistance to the police is also made more probable by evidence,  
7 in the form of expert testimony, that his actions were consistent with an attempt to  
8 commit suicide by cop.” *Boyd, supra*, 576 F.3d at 944. Likewise, Decedents’ actions  
9 here as supported through his criminal history, in particular his prior suicide by cop  
10 attempt in 2015 and his criminal activity in the days leading up to the shooting, make  
11 it more probable that his actions were an attempt to commit suicide by cop.

12 Contrary to Plaintiffs’ arguments, much like in *Boyd*, what the officers  
13 perceived immediately prior to the shooting is hotly contested by Plaintiffs who  
14 contend that despite law enforcement and third-party testimony, Puga never pulled a  
15 gun from his waistband. And unfortunately, not a single video shows Puga’s waist at  
16 the time of the shooting and therefore like *Boyd*, what the officers perceived at the  
17 time of the shooting is disputed. Likewise, even though multiple witnesses testified  
18 Puga had a gun in his hand and a gun was found under him after the shooting, the  
19 poor quality of the video makes it difficult to see the gun and therefore Plaintiffs  
20 intend to dispute that Puga also had a gun still in his hand as he ran. However,  
21 Defendants suicide by cop evidence as supported by his prior suicide by cop attempt  
22 and criminal activity in days leading up to the shooting, make it more probable that  
23 decedent was trying to provoke a police shooting rather than acting upon fear. *Boyd,*  
24 *supra*, at 948.

25 Further, just as in *Boyd*, Plaintiffs have offered no scientific challenge to  
26 Defendants’ suicide by cop evidence and like in *Boyd* this court should find that the

evidence of Decedent's criminal history in the context of this theory is highly relevant and more probative than prejudicial. *Boyd*, 576 F.3d at 948-949. Moreover, as set forth by the Court in *Boyd*, when considering the issue, "admission of evidence in support of the suicide by cop theory falls within the exception for otherwise inadmissible character evidence carved out in Rule 404(b)." *Boyd supra*, 576 F.3d 938 (suicide by cop properly considered as evidence of plan, intent and motive).

### III. PUGA'S CRIMINAL HISTORY IS RELEVANT TO LIABILITY

To begin, Plaintiffs intend to present evidence that all Puga's actions at the time of the shooting can be explained away because he was "scared." (Plaintiff's Opposition to Motion for Summary Judgment- Dkt. 111- pg. 10-"Puga expressed concerns to the officers that he thought the officers were going to shoot him" and "he sounded scared of being shot by police" and pg. 23- "he likely turned to run because he panicked at seeing several officers quickly approaching him and was scared he was going to be shot"). Plaintiffs further intend to call their expert Roger Clark to offer opinions that the Defendants' tactics were ill conceived and pushed Puga into reacting. Clark will testify that if Defendants would have called SWAT, developed a better tactical plan, and not left cover to approach Puga, this shooting would have never occurred. (Gustafson Decl. ¶2, Exhibit 1- Clark Opinion 6). In short, through Clark, Plaintiffs will argue that Defendants were negligent and that if different tactics were used there would have been no shooting. Defendants must therefore be permitted to present through their expert Dr. Kris Mohandie, evidence that Puga's action that night were born out of his desire to commit suicide by cop and this plan coupled with his intoxication would have made it highly unlikely that the situation could be deescalated by Defendants.

At the outset, Plaintiffs do not challenge Dr. Mohandie's exemplary qualifications, nor have they challenged the sufficiency of the facts or data upon

1 which his opinions were based upon or the reliability of the methods he used.  
2 *Fed.R.Evid* 702, *Daubert, v. Merrell Dow Pharm, Inc.* 509 U.S. 579, 597; *Boyd v.*  
3 *City and County of San Francisco*, 576 F.3d 938, 946 (9<sup>th</sup> Cir. 2009)(Plaintiff  
4 “provides no scientific opinions challenging or refuting” Defendants suicide by cop  
5 evidence).<sup>1</sup>

6 In order to reach his opinions that Puga’s behavior was consistent with an  
7 individual that was intent on committing suicide by cop, Dr. Mohandie relies in part  
8 on undisputed aspects of Puga’s criminal history. These pieces of Puga’s criminal  
9 history are not being offered to “tarnish” Puga’s reputation as claimed by Plaintiffs,  
10 but are instead part of the evaluation by Defendants’ retained psychologist to explain  
11 the context of Puga’s actions.

12 First, there is ample evidence, including a video recording from 2015, wherein  
13 Puga engaged in markedly similar behavior which is also characterized as a suicide  
14 by cop attempt by Dr. Mohandie. In particular, Puga led LASD on a long pursuit and  
15 at the conclusion of that pursuit pulled a gun and shot at deputies, before fleeing to a  
16 nearby residence. It was later discovered that the gun used in that case was actually  
17 fake. Puga admitted in his interview with police afterwards that he had nothing to live  
18 for and that he wanted the police to kill him. (Plaintiff’s Exhibit A- pg 8). As  
19 explained by Dr. Mohandie, among the empirical indicators of suicide cop are past  
20 suicidal ideations, past suicidal cop attempts, shooting at police and other non -  
21 compliant behavior involving law enforcement, all of which were on display in this  
22 2015 incident. (Plaintiff’s Exhibit A- pg. 30).

23 Likewise, Puga stated very clearly at the scene of the shooting that he was not  
24 going back to prison, he had served time and was a third striker. (Plaintiffs’ Exhibit

---

25  
26 <sup>1</sup> Similarly, there has been no Daubert challenge made to Defendants’ police  
27 practices expert Ken Hubbs nor to Defendants’ criminal law expert Joshua Visco.

1 A”, page 9). These statements not only informed Dr. Mohandie’s suicide by cop  
2 assessment but were also known to the officers at the scene and would have been a  
3 factor they would have had to consider as part of the totality of the circumstances.  
4 Puga’s statements cannot be discarded merely because they suggest he has been to  
5 prison and committed crimes.

6 Similarly, Dr. Mohandie relies on the fact that Puga was the subject of a current  
7 no bail warrant for violating parole and that this coupled with his criminal history and  
8 conduct on February 16-17, 2021, made it a virtual certainty that Puga was going back  
9 to jail, another key assessment in the suicide by cop analysis. (Plaintiff’s Exhibit A-  
10 page 9-10).

11 Further, Puga’s violent acts leading up to the shooting are relevant again to  
12 establish that de-escalation was unlikely regardless of the list of tactics that Clark  
13 claims should have been used to prevent the shooting. As set forth by Dr. Mohandie  
14 “there were a number of high-risk indicators present in this case that indicated a low  
15 likelihood of a successful verbal outcome, the most significant being Mr. Puga’s  
16 homicidal and suicidal state of mind (death wish)<sup>2</sup>, his unwillingness to submit to  
17 arrest and return to prison<sup>3</sup>, fueled by methamphetamine and alcohol intoxication,  
18 which rendered him unwilling and incapable of being reasoned with.” (Exhibit A-  
19 pgs. 36-37). This opinion is directly on point to refute the evidence that will be offered  
20 by Plaintiffs that Puga was scared and that if better tactics were used deadly force  
21 would not have been needed. Further, Defendants suicide by cop evidence is also  
22 essential for the jury’s evaluation of Puga’s comparative negligence. (CACI 407-

---

24 <sup>2</sup> Supported by the 2015 shooting with Los Angeles County Sheriff’s  
25 Department.

26 <sup>3</sup> Supported by facts that Mr. Puga evaded officers just days before the shooting,  
27 when they attempted to stop him for a DUI and was now on the run.



1 Negligence of Decedent is considered, 401- Standard of Care- “Negligence is the  
2 failure to use reasonable care to prevent harm to oneself or others.”).

3 **IV. PUGA’S CRIMINAL HISTORY IS RELEVANT TO DAMAGES**

4 Plaintiffs are seeking damages for the loss of Puga’s life and interference with  
5 their familial relationship. These types of damages demand that the jury be provided  
6 evidence as to the lifestyle that Puga led.

7 “The mere existence of a biological link between parent and child is not a  
8 sufficient basis to support a Fourteenth Amendment claim for loss of familial  
9 relationship rights.” See, Ninth Circuit Model Civil Jury Instruction No. 9.32, “Due  
10 Process--Interference with Parent/Child Relationship, “Comment, § I (citing *Wheeler*  
11 *v. City of Santa Clara*, 894 F.3d 1046, 1058 (9th Cir. 2018)) (emphasis added).  
12 Instead, “[j]udicially enforceable Fourteenth Amendment interests require enduring  
13 relationships reflecting assumption of parental responsibility and stem from the  
14 emotional attachments that derive from the intimacy of daily association....”  
15 *Wheeler, supra*, 894 F.3d at 1058; see, Ninth Circuit Model Civil Jury Instruction No.  
16 9.32, “Due Process--Interference with Parent/Child Relationship, “Comment,” § I  
17 (“In order to bring a Fourteenth Amendment due process claim, the parent and child  
18 must have relationships ‘which reflect some assumption ‘of parental responsibility.’”)  
19 (quoting *Kirkpatrick v. County of Washoe*, 843 F.3d 784, 789 (9th Cir. 2016)).  
20 Likewise, state wrongful death claims require an evaluation of the loss of the value of  
21 the relationship with decedent for the jury to value the loss of the love,  
22 companionship, comfort care, assistance, protection, society, and moral support of  
23 decedent, as well as the loss of decedent’s training and guidance. *See*, CACI Jury  
24 Instruction 3921.

25 These types of damages simply cannot be assessed if the jury is stripped from  
26 receiving any information as to who Puga really was as portrayed through his

1 extensive and violent criminal past, which resulted in lengthy incarcerations away  
2 from his family.

3 Indisputably, Decedent's life expectancy is at issue in this "wrongful death"  
4 case. *See, Francis v. Sauve*, 222 Cal.App.2d 102, 121 (1963); *see also, McAsey v.*  
5 *U.S. Department of Navy*, 201 F.Supp.2d 1081, 1097 (N.D. Cal. 2002) ("In wrongful  
6 death actions, damages for pecuniary loss are limited by the life expectancy of the  
7 decedent immediately before he sustained the injuries which caused his death.")  
8 (internal citations omitted); *Allen v. Toledo*, 109 Cal. App. 3d 415, 424 (1980) ("The  
9 life expectancy of the deceased is a question of fact for the jury to decide considering  
10 all relevant factors including the deceased's **health, lifestyle** and occupation")  
11 (emphasis added); *Boyd v. City and County of San Francisco*, 2006 WL 1390423, at  
12 \*2 (N.D. Cal. 2006) ("In particular, California law allows a jury to consider the  
13 decedent's life expectancy, taking into account his **health, habits** and lifestyle as well  
14 as any...**self-destructive impulses** in determining these amounts.") (emphasis added).  
15 It is a commonsense reality that criminal activity presents lifestyle risks that can (and  
16 do) impact relationships and life expectancy.

17 Introduction of a decedent's criminal history is also grounded in basic notions  
18 of fairness and the recognition that litigation is a search for the truth. *See, Boyd v.*  
19 *City and County of San Francisco*, 576 F.3d 938, 948 (9th Cir. 2009) (affirming  
20 district court's admission of decedent's criminal history as relevant and highly  
21 probative to the issue of damages); *see also, Lewis v. District of Columbia*, 793 F.2d  
22 361, 363 (D.C. Cir. 1986) (affirming district court's order admitting evidence of past  
23 drug use *and arrests* when the evidence was probative in aiding the jury to fairly  
24 measure the extent of damages for the alleged police "excessive force" claim and that  
25 its prejudicial effect did not substantially outweigh its probative value).

26 That the **entirety** of Decedent's adult life was marked by arrests and



1 incarceration goes directly to his “health, habits, and lifestyle” as contemplated by  
2 California’s “wrongful death” damages instruction. *See*, CACI 3291 (wrongful death  
3 damages calculations require the jury to evaluate decedent’s “**health**, habits, **activities**  
4 [and] **lifestyle**....”) (emphasis added). His criminal past is also directly relevant to the  
5 relationship he maintained—or did not maintain—with Plaintiffs. *See*, *Nelson v.*  
6 *County of Los Angeles*, 113 Cal.App.4th 783, 793 (2003) (reducing heirs’ damages in  
7 light of evidence showing that heirs did not know decedent well: “[A]t the time of  
8 [decedent’s] death in 1998, neither [heir] knew...he had been incarcerated for  
9 substantial periods of time...”); *see also*, *Cobige v. City of Chicago*, 651 F.3d 780,  
10 784 (7th Cir. 2011) (arrest record admissible because such evidence “potentially  
11 affect[s]...the damages recoverable by [the estate] for loss of companionship...”);  
12 *Chatman v. City of Chicago*, 2014 WL 1813172, at \*1 (N.D. Ill. 2014) (“[T]he  
13 decedent’s records are relevant because his criminal history may affect the amount of  
14 damages his mother might recover because of his death.”); *Chatham v. Parkhill*, 2013  
15 WL 5912154, at \*1 (S.D. Ill. 2013) (proper for defendants to present “evidence of the  
16 decedents criminal history and daily drug use in order to rebut evidence regarding the  
17 decedent’s relationship with his son.”). This is true whether Plaintiffs admit to  
18 knowledge of Decedent’s arrests and incarceration, or attempt to disclaim knowledge,  
19 as was done here. *See*, *Nelson*, *supra*, 113 Cal.App.4th at 793-794 (finding that  
20 plaintiffs’ lack of knowledge of decedent’s criminal history was a relevant factor in  
21 reversing their “wrongful death” damages award).<sup>4</sup>

22 To date, Plaintiffs have attempted to paint as favorable view as they can of  
23 Decedent and his contributions. Defendants are therefore entitled present evidence to  
24 the jury that rebuts these claims by highlighting the not-so-favorable parts of

---

25  
26 <sup>4</sup> On this point, Plaintiffs largely feigned ignorance as to Decedent’s extensive  
27 criminal past. (Gustafson Decl. ¶¶3-6, Exhibits 2-5).

1 Decedents life, including facts impacting the nature, depth, and quality of Plaintiffs’  
2 relationship with him. *See, Soto v. BorgWarner Morse TEC Inc.*, 239 Cal.App.4th  
3 165, 201 (2015) (in wrongful death cases, “[f]actors such as the closeness of a family  
4 unit, the depth of their love and affection,... are proper considerations for a jury  
5 assessing noneconomic damages.”); *Benwell, supra*, 249 Cal.App.2d at 349 (“It is  
6 well established in this state...that evidence of the nature of the personal relationship  
7 that existed between the decedent and the beneficiaries of a wrongful death action has  
8 a bearing on the compensation for loss of society, comfort and protection, and is  
9 therefore ordinarily admissible in such an action.”).

10 Decedent’s criminal history must be admitted for a proper assessment of the  
11 valuation of damages here. As explained by Dr. Mohandie, Decedent’s history, along  
12 with other factors establishes that he likely suffered from disorders that were  
13 associated with “premature death due to overdose, accidents due to high risk behavior,  
14 multiple health conditions that shorten life and result in sudden death violence directed  
15 towards others, arrests and incarcerations, employment difficulties, family and  
16 interpersonal relationship disruption and mortality by suicide (as occurred in this  
17 case). (Plaintiff’s Exhibit A, pg. 39). Clearly Dr. Mohandie’s diagnosis of decedent  
18 and the factual basis for it are largely based on Puga’s criminal history. And this  
19 opinion is essential to refuting claims of a close family relationship and related life  
20 expectancy issues.

21 Finally, Plaintiffs seek to exclude the testimony of expert Visco, an experienced  
22 criminal law attorney, whose qualifications are again not challenged by Plaintiffs. Mr.  
23 Visco reviewed Plaintiff’s extensive criminal history and the reports of his conduct  
24 leading up to his death, which included fleeing a DUI investigation, engaging in a  
25 high-speed pursuit, and ultimately pointing a gun at Defendants. Based on his review  
26 of the material and significant experience, Mr. Visco intends to offer opinions as to

1 the potential charges Puga would face and the likely sentence he would receive if  
2 convicted. (Plaintiff's Exhibit B- Visco Report). Again, this opinion and the facts  
3 that support it are highly relevant for the jury's assessment of the valuation of the  
4 future relationship with the Decedent had he lived, including that there was a high  
5 degree of certainty that Puga would spend the remainder of his life in prison.

6 Finally, Defendants' introduction of Puga's criminal history will not result in  
7 any undue consumption of time, as the bulk of the evidence will be offered through  
8 Dr. Mohandie, who would still be called to testify that Puga's actions were consistent  
9 with suicide by cop based on other factors, albeit he would be unfairly limited in his  
10 ability to explain that Puga displayed extensive additional factors that support the  
11 opinion. Likewise, Mr. Visco's testimony would be brief.

12 **V. CONCLUSION**

13 For all of the reasons set forth above, the Court should not exclude Puga's criminal  
14 history from evidence. Further, bifurcation of damages, does not fully address the  
15 issue because Decedent's criminal history is integral to explaining liability including  
16 all the factors that confirm for Dr. Mohandie that Mr. Puga committed suicide by cop.

17  
18 DATED: April 24, 2025

**LYNBERG & WATKINS**  
A Professional Corporation

19  
20  
21 By: /s/ Shannon L. Gustafson  
22 **SHANNON L. GUSTAFSON**  
23 **AMY R. MARGOLIES**  
24 Attorneys for Defendant,  
25 COUNTY OF SAN BERNARDINO  
26 ROBERT VACCARI, and JAKE ADAMS  
27

**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for County Defendants, certifies that this brief contains 3,091 words, which:

x complies with the word limit of L.R. 11-6.1.

☐ complies with the word limit set by court order dated \_\_\_\_\_.

DATED: April 24, 2025

**LYNBERG & WATKINS**  
A Professional Corporation

By: /s/ Shannon L. Gustafson  
**SHANNON L. GUSTAFSON**  
**AMY R. MARGOLIES**  
Attorneys for Defendant,  
COUNTY OF SAN BERNARDINO  
ROBERT VACCARI, and JAKE ADAMS